

(Draft - Awaiting Formal Approval)
MINUTES OF THE
UTAH CONSTITUTIONAL REVISION COMMISSION
Friday, March 6, 2009 – 12:00 p.m. – Room 450 State Capitol

Members Present:

Judge Jon M. Memmott, Vice Chair
Sen. Peter Knudson
Sen. John L. Valentine
Rep. Sheryl L. Allen
Rep. David Litvack
Rep. Ronda Rudd Menlove
Ms. Lisa Watts Baskin
Mr. Robin L. Riggs

Members Absent:

Mr. Byron L. Harward
Mr. Kirk Jowers
Dr. Michael Petersen
Mr. Roger Tew
Mr. Kevin J. Worthen

Staff Present:

Mr. Jerry D. Howe, Policy Analyst
Mr. Robert H. Rees, Associate General Counsel
Ms. Amanda K. Majers, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Vice Chair Memmott called the meeting to order at 12:21 p.m. Mr. Harward, Mr. Jowers, Dr. Petersen, Mr. Tew and Mr. Worthen were excused from the meeting.

2. Review of Constitutional Amendments Proposed for Consideration During the 2009 General Session of the Utah Legislature

Sen. Scott McCoy distributed and discussed, S.J.R. 8, "Joint Resolution Regarding Eligibility for Legislative Office." He explained that S.J.R. 8 specifies that the current three-year residency requirement in the state and the three-month residency requirement in the district, for the office of senator or representative, also apply to a person appointed to fill a mid-term vacancy, and it clarifies that the provision prohibiting a legislator from continuing to serve after ceasing to be a resident of the district for which that legislator serves applies to a person appointed to fill a mid-term vacancy.

Sen. Valentine inquired why Sen. McCoy chose to dictate that the time for calculating the residency requirement is the date of appointment rather than the time for filing for the office.

Sen. McCoy stated that it was to clarify how to determine the last date for filing in a mid-term vacancy.

Sen. Valentine expressed that the intent of S.J.R. 8 is to specify that if a party chooses a candidate it needs to recognize that if the candidate has not lived in the district for the requisite amount of time that candidate may not fulfill the residency requirement needed to qualify to fill the mid-term vacancy.

MOTION: Mr. Riggs moved to favorably recommend S.J.R. 8, "Joint Resolution Regarding Eligibility for Legislative Office." The motion passed unanimously with Rep. Litvack absent for the vote.

Rep. Carl Wimmer distributed and discussed, H.J.R. 8, 1st Substitute, "Joint Resolution Regarding Secret Ballot." He stated that H.J.R. 8, 1st Substitute would strengthen and tighten the definition of a secret ballot in Article IV, Section 8 of the Utah Constitution. Rep. Wimmer elaborated that the proposed amendment would add language specifying that all elections shall be by secret ballot, including elections

Minutes of the Utah Constitutional Revision Commission
March 6, 2009
Page 2

under state or federal law for public office, on an initiative or referendum, or to designate or authorize employee representation or individual representation.

Mr. Mike Lee, Howrey LLP and Save Our Secret Ballot, discussed the provisions of H.J.R. 8, 1st Substitute and analyzed the preemption issues that might arise if it were enacted.

Sen. Valentine asked for an example of the type of election that would be protected by the language "individual representation."

Mr. Lee answered that the language is intended as a catch all savings clause for any other type of election that is currently protected by state, federal, or local law. He stated that the amendment clarifies and expands the existing Utah constitutional provision that "all elections shall be by secret ballot."

Rep. Allen inquired about the application of this amendment to an intra-party election.

Mr. Lee informed the Commission that party organizations have been considered private and would not be covered under the constitutional amendment.

Rep. Allen asked why this constitutional amendment should be voted on this year since it will not be placed on the ballot until 2010.

Rep. Wimmer responded that H.J.R. 8, 1st Substitute sends a message to the federal government that Utah is not in favor of the proposed federal Employee Free Choice Act.

Rep. Menlove inquired if H.J.R. 8, 1st Substitute could be challenged in court obliging Utah to defend this constitutional amendment if the proposed federal Employee Free Choice Act is enacted.

Mr. Lee answered that the content of the proposed federal Employee Free Choice Act could affect whether there would be standing for a legal challenge, and stated that a legal challenge also depends on whether H.J.R. 8, 1st Substitute once enacted is viewed as inimical to federal law after the proposed changes are made to the National Labor Relations Act.

Vice Chair Memmott inquired why this constitutional amendment was placed in the suffrage article rather than the labor article since it is targeted at employee elections.

Mr. Lee responded that the placement most likely was intended to be consistent with existing state constitutional law and policy, to clarify existing language, and to expand existing scope to include other types of elections that may not be included in the absence of that clarifying language.

Rep. Wimmer stated that he originally drafted a new section to the Utah Constitution but then made a policy decision to place the amendment where it is currently, in a section that pertains to secret ballots.

Mr. John Boyden, citizen, spoke in favor of the proposed amendment, and he expressed a desire to extend the secret ballot provision to party elections because those elections affect the outcome of public elections.

Minutes of the Utah Constitutional Revision Commission

March 6, 2009

Page 3

Mr. Jim Judd, president of Utah AFL-CIO, spoke in opposition to the proposed amendment because it is a complicated issue that could potentially disenfranchise certain voters due to its placement in the suffrage article rather than the labor article.

Mr. Dave Davis, Vice President and General Counsel, Utah Retail Merchants Association and Utah Food Industry, spoke in favor of the proposed amendment and reiterated the importance to businesses of preserving the secret ballot for employee elections.

Mr. Riggs stated his reservations concerning the Commissions deliberation of this amendment because of its political overtones.

Sen. Valentine stated that this amendment is not only a labor relations issue, and also echoed Mr. Riggs concern about the Commission's role in such a political issue. He encouraged the Commission to continue to study this issue whether or not the amendment passes the Legislature.

Judge Memmott clarified that the Commission is statutorily prohibited from discussing an amendment if it passes both houses of the Legislature.

Rep. Allen stated that she is not inclined to give a favorable recommendation to H.J.R. 8, 1st Substitute.

3. Other Items / Adjourn

MOTION: Sen. Valentine moved to adjourn the meeting. The motion passed with Rep. Allen and Rep. Litvack voting in opposition.

Vice Chair Memmott adjourned the meeting at 1:53 p.m.